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E-filed 9/17/07

Atorneys for Defendant
THE TIMBERLAND COMPANY
(Correctly named and identified as Timberland Retail, Inc.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID LEE, an individual, on behalf of himself and on behalf of others similarly situated.,

Case No. C07 02367 JF (HRL)

Judge: Jeremy Fogel

Plaintiffs,

**AMENDED
STIPULATED PROTECTIVE ORDER**

THE TIMBERLAND COMPANY, a New Hampshire corporation conducting business in the State of California, and Does 1-100..

Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under FRCP 26(c) and any other applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures

1 that must be followed and reflects the standards that will be applied when a party seeks permission
2 from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and outside counsel (and their support staff).

6 2.2 Disclosure or Discovery Material: all items or information, regardless of the
7 medium or manner generated, stored, or maintained (including, among other things, testimony,
8 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
9 in this matter.

10 2.3 “Confidential” Information or Items: information (regardless of how generated,
11 stored or maintained) or tangible things that qualify for protection under standards developed under
12 F.R.Civ.P. 26(c).

13 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
14 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
15 party would create a substantial risk of serious injury that could not be avoided by less restrictive
16 means.

17 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
18 Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
20 Material in this action.

21 2.7 Designating Party: a Party or non-party that designates information or items
22 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
23 – Attorneys’ Eyes Only.”

24 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
25 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

26 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
27 retained to represent or advise a Party in this action.

28 2.10 House Counsel: attorneys who are employees of a Party.

1 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
2 their support staffs).

3 2.12 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
5 or as a consultant in this action and who is not a past or a current employee of a Party or of a
6 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of
7 a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant
8 retained in connection with this litigation.

9 2.13 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
11 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
12 subcontractors.

13

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material (as
16 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
17 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
18 counsel to or in court or in other settings that might reveal Protected Material.

19

20 4. DURATION

21 Even after the termination of this litigation, the confidentiality obligations imposed by this
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
23 otherwise directs. The Court shall not retain jurisdiction over this stipulated agreement and order for
24 more than 6 months following final disposition of this action.

25

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
28 Party or non-party that designates information or items for protection under this Order must take care
to limit any such designation to specific material that qualifies under FRCP 26(c). A Designating Party

must make a good faith determination prior to designating for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of

1 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 2 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 3 copied and produced, the Producing Party must determine which documents, or portions thereof,
 4 qualify for protection under this Order, then, before producing the specified documents, the Producing
 5 Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 6 ATTORNEYS' EYES ONLY") at the top of each page that contains Protected Material. If only a
 7 portion or portions of the material on a page qualifies for protection, the Producing Party also must
 8 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
 9 must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or
 10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

11 (b) for testimony given in deposition or in other pretrial or trial

12 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
 13 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
 14 specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS'
 15 EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled
 16 to protection, and when it appears that substantial portions of the testimony may qualify for
 17 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
 18 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the
 19 specific portions of the testimony as to which protection is sought and to specify the level of
 20 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 21 EYES ONLY"). Only those portions of the testimony that are appropriately designated for protection
 22 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

23 Transcript pages containing Protected Material must be separately bound by the
 24 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
 25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or non-party
 26 offering or sponsoring the witness or presenting the testimony.

27 (c) for information produced in some form other than documentary, and for

28 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or
 2 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information or
 3 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 4 portions, specifying whether they qualify as "Confidential" or "Highly Confidential – Attorneys' Eyes
 5 Only."

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 7 designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys' Eyes
 8 Only" does not, standing alone, waive the Designating Party's right to secure protection under this
 9 Order for such material. If material is appropriately designated as "Confidential" or "Highly
 10 Confidential – Attorneys' Eyes Only" after the material was initially produced, the Receiving Party,
 11 on timely notification of the designation, must make reasonable efforts to assure that the material is
 12 treated in accordance with the provisions of this Order.

13

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
 16 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 17 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
 18 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
 19 original designation is disclosed.

20 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
 21 Party's confidentiality designation must do so in good faith and must begin the process by conferring
 22 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
 23 the Designating Party. In conferring, the challenging party must explain the basis for its belief that
 24 the confidentiality designation was not proper and must give the Designating Party an opportunity to
 25 review the designated material, to reconsider the circumstances, and, if no change in designation is
 26 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
 27 stage of the challenge process only if it has engaged in this meet and confer process first.

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 2 confidentiality designation after considering the justification offered by the Designating Party may
 3 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
 4 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
 5 Each such motion must be accompanied by a competent declaration that affirms that the movant has
 6 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
 7 forth with specificity the justification for the confidentiality designation that was given by the
 8 Designating Party in the meet and confer dialogue.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
 10 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 11 question the level of protection to which it is entitled under the Producing Party's designation.
 12

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected material that is
 15 disclosed or produced by another Party or by a non-party in connection with this case only for
 16 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 17 disclosed only to the categories of persons and under the conditions described in this Order. When the
 18 litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
 19 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location
 21 and in a secure manner that ensures that access is limited to the persons authorized under this Order.
 22

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
 25 any information or item designated CONFIDENTIAL only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as well
 27 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 28 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) The author of the document or the original source of the information

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) The Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed.

(c) the Court and its personnel:

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL" —

ATTORNEYS' EYES ONLY Information or Items to "Experts"

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” first must make a written request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any professional services during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven court days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is

1 reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any
 2 additional means that might be used to reduce that risk. In addition, any such motion must be
 3 accompanied by a competent declaration in which the movant describes the parties' efforts to resolve
 4 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets
 5 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

6 In any such proceeding the Party opposing disclosure to the Expert shall bear
 7 the burden of proving that the risk of harm that the disclosure would entail (under the safeguards
 8 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

9

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 11 OTHER LITIGATION.

12 If a Receiving Party is served with a subpoena or an order issued in other litigation that
 13 would compel disclosure of any information or items designated in this action as "CONFIDENTIAL"
 14 or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," the Receiving Party must so notify
 15 the Designating Party, in writing (by fax, if possible) immediately and in no event more than three
 16 court days after receiving the subpoena or order. Such notification must include a copy of the
 17 subpoena or court order.

18 The Receiving Party also must immediately inform in writing the Party who caused the
 19 subpoena or order to issue in the other litigation that some or all of the material covered by the
 20 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 21 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused
 22 the subpoena or order to issue.

23 The purpose of imposing these duties is to alert the interested parties to the existence
 24 of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect
 25 its confidentiality interests in the court from which the subpoena or order issued. The Designating
 26 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 27 material – and nothing in these provisions should be construed as authorizing or encouraging a
 28 Receiving Party in this action to disobey a lawful directive from another court.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 5 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
 6 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
 7 request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
 8 attached hereto as Exhibit A.

9
10 10. FILING PROTECTED MATERIAL. Without written permission from the

11 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
 12 may not file in the public record in this action any Protected Material. A Party that seeks to file under
 13 seal any Protected Material must comply with Civil Local Rule 79-5.

14
15 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the

16 Producing Party, within sixty days after the final termination of this action, each Receiving Party must
 17 return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
 18 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or
 19 capturing any of the Protected Material. With permission in writing from the Designating Party, the
 20 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
 21 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 22 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
 23 the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that
 24 was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 25 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
 26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 27 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
 28 even if such materials contain Protected Material. Any such archival copies that contain or constitute

1 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
2 above. Nothing in this provision shall require the Court to return any lodged or filed documents
3 that contain Protected Material.

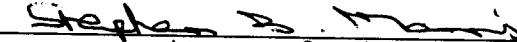
4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
6 to seek its modification by the Court in the future.

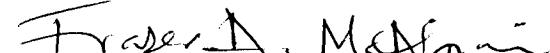
7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
8 Order no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the material covered by
11 this Protective Order.

12
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED: 8/29/07


Attorneys for Plaintiff

16 DATED: August 31, 2007


Attorneys for Defendant

18 PURSUANT TO STIPULATION, IT IS SO ORDERED, AS AMENDED.

19 DATED: 9/17/07

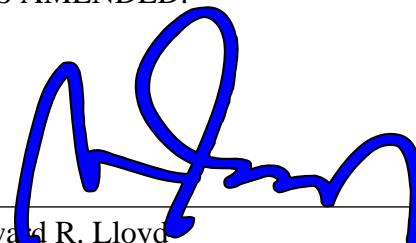

Howard R. Lloyd
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for the
Northern District of California on _____ [date] in the case of *David Lee v. The
Timberland Company*, Case No. C07 02367 JF. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
[print or type full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed:

Printed name:

[printed name]

1
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3 Dated: 6/31/2007

AKIN GUMP STRAUSS HAUER & FELD LLP

4
5 By


Fraser A. McAlpine

6
7 Attorneys for Defendant
8 THE TIMBERLAND COMPANY
9 (Correctly named and identified as
10 Timberland Retail, Inc.)

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1 PROOF OF SERVICE
2
3

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO
5

6 I am employed in the County of San Francisco, State of California. I am over the age of 18
7 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San
8 Francisco, California 94104. On August 31, 2007, I served the foregoing document(s) described as:
9 STIPULATED PROTECTIVE ORDER on the interested party(ies) below, using the following means:
10

11 Stephen B. Morris
12 Mark C. Hinkley
13 MORRIS AND ASSOCIATES
14 444 West C Street, Suite 300
15 San Diego, California 92101

16 Walter Haines
17 UNITED EMPLOYEES LAW GROUP
18 65 Pine Avenue, #312
19 Long Beach, CA 90802

20 BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the
21 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
22 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
23 collection and processing correspondence for mailing. On the same day that correspondence is placed
24 for collection and mailing, it is deposited in the ordinary course of business with the United States
25 Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

26 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
27 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
28 placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

29 BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed
30 to the respective address(es) of the party(ies) stated above and providing them to a professional
31 messenger service for service.

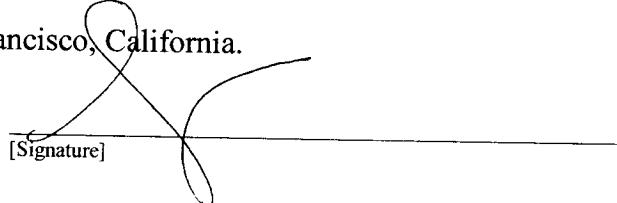
32 BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the
33 documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by
34 the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is
35 attached.

36 BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties
37 to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the
38 respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable
39 time after the transmission, any electronic message or other indication that the transmission was
40 unsuccessful.

41 I declare that I am employed in the office of a member of the bar of this court at whose
42 direction the service was made.

43 Executed on August 31, 2007, at San Francisco, California.

44 HOLLY B. TOSCHI
45 [Print Name of Person Executing Proof]

46 
47 [Signature]